

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 LOCAL 1310, AMALGAMATED TRANSIT UNION :  
 :  
 and : Case 188  
 : No. 43738  
 : MA-6055  
 CITY OF EAU CLAIRE (DEPARTMENT :  
 OF PUBLIC WORKS) :  
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Appearances:

Mr. Edward McGeorge, President and Mr. Jerry Blodgett, appearing on behalf of the Union.  
Mr. Jeffrey P. Hansen, Assistant City Attorney, appearing on behalf of the Employer.

ARBITRATION AWARD

The Employer and the Union above are parties to a 1987-89 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Pat Kruschke, concerning promotion to full-time work.

The undersigned was appointed and held a hearing in Eau Claire, Wisconsin on June 13, 1990, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on July 18, 1990.

STIPULATED ISSUES

1. Was the City within its contractual rights when it promoted to full-time Albin Dasher instead of Pat Kruschke?
2. If not, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 2 - UNION SENIORITY AND RIGHTS

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Section 6. All practices now in effect, affecting members, unless changed by terms of this agreement, shall remain in effect unless changed by mutual agreement.

ARTICLE 3 - SENIORITY

Section 1. Seniority, as defined herein, shall be the length of continuous service within the Transit Department.

. . .

Section 4. The City agrees to keep posted in an accessible place, in the operator's room and garage, an up-to-date seniority list showing the seniority standing of each and every employee covered by this agreement.

. . .

ARTICLE 6 - MANAGEMENT RIGHTS

Section 2. The Amalgamated agrees that the City is entitled to a reasonable probationary period on each new employee, and the City agrees that such probationary period will not exceed six (6) months from the date of employment. A probationary employee shall work under the provisions of this agreement but shall be employed on only a trial basis. During this period he/she may be terminated without further recourse.

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ARTICLE 7 - WORKING CONDITIONS

. . .

Section 2. Openings for any City employment positions will be posted in the operator's room for five working days, except for CTSEA postings which will be posted for three working days. Qualifications being equal, seniority will prevail in the selection of applicants for jobs at Transit. A permanent full-time employee in the work division (Local 1310) shall have rights over all other full-time employees.

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DISCUSSION

Grievant Pat Kruschke was hired as a part-time bus driver on February 8, 1989. On May 22 of the same year Albin Dasher was employed as a part-time bus driver; when a full-time opening became available on December 11, however, Dasher rather than Kruschke was promoted to fill the vacancy. Kruschke grieved on grounds that this violated her seniority rights. Subsequently, Kruschke was promoted to full-time on April 16, 1990; the grievance therefore covers the period between the two promotion dates.

Kruschke did not testify. Transit manager Ann Gullickson testified that she chose Dasher for the full-time opening in December because she considered him the more qualified driver. She described Dasher as showing "professionalism", initiative, and handling customers better, and cited an absence of customer complaints during Dasher's part-time employment. Gullickson also cited his appearance favorably, contending that he had purchased clothes similar to the Department's uniforms prior to the Department having an obligation to provide him with a clothing allowance. Gullickson contrasted Dasher's appearance and performance to Kruschke's in several ways. Gullickson stated that Kruschke was slow in learning how the system worked and was still asking basic questions about routes and times five or six months after starting to work. Gullickson also cited several complaints from passengers, though she did not aver that all of these complaints were justified. Finally, Gullickson testified that on two occasions Kruschke was "spoken to" concerning what she wore to work, because she dressed more casually than the Department preferred. Gullickson identified particularly sweatshirts and tee-shirts as inappropriate dress which Kruschke had worn on more than one occasion.

With respect to the passenger complaints in particular, Gullickson stated that most of the eight complaints received (by the end of October) concerning Kruschke occurred after she was appointed to a temporary full-time position in August, which resulted from a driver's illness. The complaints were in the nature of running ahead of schedule and driving fast; Gullickson testified, however, that Kruschke had real skill in handling passengers.

Gullickson testified that after she did not receive the December full-time job opening, Kruschke became more attentive and her work improved in general. Gullickson stated that she had had doubts about passing Kruschke from probationary status at the time, but that her work improved to justify her promotion to full-time when the second opening occurred in April, 1990.

Driver supervisor Charles Reineke testified that he also considered Dasher better qualified for the permanent full-time position than Kruschke, because Dasher had good driving skills, and prior experience driving large vehicles. Reineke agreed with Gullickson's testimony that Kruschke continued to ask basic questions long into her employment, which he had expected her to know the answers to by then. Reineke testified that Kruschke was given a full-time temporary job because the management felt she could handle it, and that this was not in retrospect the best decision, because her deficiencies became more visible when working full-time.

The Union contends that in all known prior cases, the senior part-time driver has been offered the promotion to full-time first, and that this constitutes a past practice of promotion by seniority within the meaning of Article 2, Section 6. The Union contends that Kruschke had passed the six

month probationary period by the time of the promotion, and was therefore clearly qualified for full-time status, and contends that the Employer violated her seniority rights by promoting Dasher instead. The Union argues that consideration of her dress in the promotion was improper, because there was no dress code for new drivers and no eligibility for clothing allowance until later in her employment. The Union questions the validity of the passenger complaints, and notes that Gullickson did not allege that the complaints were necessarily valid. As to Kruschke's questioning on basic matters, the Union argues that Kruschke's route assignments, as a part-time driver and replacement driver when full-time, were more varied than the normal driver's assignment, and that more questions should be expected as a result. The Union requests that the Arbitrator order the grievant made whole for monetary losses between December 11, 1989 and her eventual promotion date of April 16, 1990.

The City contends that the employes eligible for promotion must be equally qualified for seniority to control the resulting decision. The City argues that both of the witnesses at the hearing testified that Dasher was more qualified, and they gave concrete reasons for this belief. The City argues that Kruschke learned more slowly, had more complaints, and had inappropriate appearance on several occasions. The City argues that under the contractual standard, it had the management right to decide which employe was more qualified, and that it properly determined that Dasher was more qualified than Kruschke. The City requests that the grievance be denied.

Of the various sections of the Agreement argued by the Union to be relevant, I find that the controlling language is in Article 7, Section 2. The Union has contended that the grievant was "qualified" to be a full-time driver, by reason of her passing the probationary period. This, however, is not the standard the parties have provided for determination of promotion questions. If in fact the probationary period language was duplicated in concept in the promotion clause, Article 7, Section 2 would say something like "seniority shall prevail among qualified employees in the selection of applicants for jobs at Transit". But the language does not say this; and "qualifications being equal, seniority will prevail . . ." is language which gives management the right to make a decision as to which employe is more qualified, if any. That decision, in turn, is reviewable by an arbitrator under the widely accepted standard that if management decision is not arbitrary, capricious, or (in many arbitrators' view) unreasonable, it must stand. Article 2, Section 6 does not control, even though there is evidence that in all prior similar situations the senior employe was promoted, because there is no evidence that in any such instance the junior employe was more qualified.

In this instance, I agree with the Union that reliance by management on occasional criticisms of the grievant's dress, standing alone, would be an unreasonable basis to find her less qualified. The parties have not provided any clothing allowance for part-time drivers, who are presumably earning less than full-time drivers. Under these circumstances, there is no reason to assume that any deficiency in dress which an employe has exhibited on a few occasions as a part-timer will necessarily be a permanent feature once the employe becomes eligible for full-time benefits, and therefore it is a management concern not closely enough related to the employe's actual qualifications to justify a decision to promote another employe solely for that reason. In this case, however, there is un rebutted testimony that other considerations also affected management's judgement. Even though it is evident that the grievant eventually learned the work involved, I find it reasonable that management would consider an employe who required fewer instructions to perform the work competently to be more qualified. And even though management admits that not all complaints levied by passengers against drivers have merit, the facts remain that Kruschke received eight and Dasher received none. Furthermore, Dasher had prior experience driving large vehicles. These are concerns traditionally considered by management in making decisions as to the level of qualifications of a driver, and could reasonably be considered here. There is no testimony in the record to contradict Gullickson's and Reineke's statements that these concerns were substantive in their decision to promote Dasher, and I therefore find that management's decision that Dasher was more qualified was not arbitrary, capricious or even unreasonable in terms commonly applied in labor relations generally.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the City was within its contractual rights when it promoted to full-time Albin Dasher instead of Pat Kruschke.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 27th day of August, 1990.

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator